

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LEO N. WILEY,

Plaintiff-Appellee,

v

CIVIL SERVICE COMMISSION,

Defendant-Appellant.

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UNPUBLISHED

September 17, 2013

No. 310227

Ingham Circuit Court

LC No. 08-001000-AA

Before: SAAD, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

Following a remand from this Court, defendant Civil Service Commission (CSC) appeals by leave granted from an April 23, 2012, order reversing the CSC's decision to reinstate plaintiff's termination. For the reasons set forth below, we reverse.

The Department of Corrections (DOC) terminated Leo Wiley's employment following his guilty-plea conviction of attempted third-degree child abuse. The DOC found various aggravating circumstances that justified discharge in lieu of other sanctions. Wiley filed a grievance, which was denied. Thereafter, a Department of Civil Service hearing officer reversed the DOC's decision to dismiss Wiley and imposed a 20-day suspension from work. The DOC appealed the hearing officer's decision to the Employment Relations Board (ERB), which recommended reinstatement of Wiley's discharge. The CSC affirmed the ERB's decision. Wiley then appealed to the circuit court, which reversed the CSC's decision.

The CSC appealed to this Court and, in its opinion, *Wiley v Civil Serv Comm*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2011 (Docket No. 293125), this Court held that the circuit court erred by "misappl[ying] the 'competent, material and substantial evidence on the whole record' standard that governed its review of [the CSC's] disciplinary decision; the court simply overlooked the serious circumstances [the CSC] had considered in opting to dismiss [Wiley] and made no reference to whether the aggravating circumstances had the requisite evidentiary support in the whole record." After noting that the CSC's decision was authorized by law, this Court ruled "the circuit court clearly erred when it disregarded the aggravating factors on which the DOC and [the CSC] relied." The Court further stated that "[t]he circuit court's incorrect application of the law effectively resulted in its unlawful supplanting of [the CSC's] disciplinary investigation and decision making process." Our Supreme Court denied Wiley's application for leave to appeal. *Wiley v Civil Serv Comm*,

490 Mich 860, 801 NW2d 888 (2011). On remand, the circuit court again reversed the CSC's decision.

The CSC argues that the circuit court's decision violated the law of the case doctrine. We agree. "Whether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo." *Schumacher v Dep't of Natural Resources (After Remand)*, 275 Mich App 121, 127; 737 NW2d 782 (2007). Trial courts are required to comply with directives from appellate courts. *Id.* Further, decisions from this Court "bind a trial court on remand . . . in subsequent appeals." *Id.* The doctrine applies to issues that were implicitly or explicitly decided on appeal. *Kasben v Hoffman*, 278 Mich App 466, 470; 751 NW2d 520 (2008). Further, the doctrine applies when there has been no material change in the facts and no intervening change in the law. *Foreman v Foreman*, 266 Mich App 132, 138; 701 NW2d 167 (2005).

While the circuit court referred to a lack of competent, material, and substantial evidence, it again misapplied this standard. This Court ruled that there were multiple aggravating circumstances to warrant dismissal and that the circuit court failed to determine "whether the aggravating circumstances had the requisite evidentiary support on the whole record." *Wiley*, slip op, p 5. On remand, though it acknowledged the facts underlying the CSC's findings, the court determined, in essence, that the aggravating circumstances were not serious enough to justify Wiley's discharge. This Court already ruled on that issue.

Further, while the court initially noted the existence of some of the "aggravating" circumstances, it proceeded to weigh the evidence as a trier of fact and ruled that the circumstances were not aggravating. This Court previously stated that this analysis was an inappropriate application of the "competent, material and substantial evidence on the whole record" standard. The circuit court was not at liberty to substitute its judgment for that of the trier of fact—the CSC—merely because it agreed with the hearing officer. In doing so, the court again impermissibly bypassed the CSC's disciplinary investigation and decision making process. *Ranta v Eaton Rapids Pub Schools Bd of Ed*, 271 Mich App 261, 265; 721 NW2d 806 (2006).<sup>1</sup>

This Court ruled that aggravating factors existed and, in its opinion, the circuit court acknowledged the evidence that supported those factors, but simply concluded that the factors were not significant enough to justify termination. The court cited evidence that Wiley struck his son with a belt, which it acknowledged to be a "weapon," that the beating left several marks on the child, and that a neighbor had to call the police to stop the beating. The court also acknowledged that evidence established that Wiley twice lied to the police and that he later

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<sup>1</sup> Wiley cites the concurrence in our Supreme Court's order denying petitioner's application for leave to appeal which, according to Wiley, gave the circuit court permission to engage in independent fact finding. A concurrence to an order is not binding and does not affect the law of the case. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 225; 760 NW2d 674 (2008); *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). This Court's prior opinion made clear that the trial court should determine if the aggravating factors were supported by competent, material and substantial evidence on the whole record.

pleaded guilty to child abuse. This constituted competent, material and substantial evidence to support the aggravating factors. *Widdoes v Detroit Pub Schools*, 242 Mich App 403, 408-409; 619 NW2d 12 (2000); *Hanlon v Civil Service Comm*, 253 Mich App 710, 727; 660 NW2d 74 (2002). While the circuit court repeatedly downplayed or excused Wiley's conduct, it was not within the trial court's authority to consider whether the asserted circumstances were sufficiently serious to qualify as "aggravating" to warrant petitioner's discharge from employment. Rather, having assumed the factual sufficiency of the aggravating circumstances, the court should have affirmed the CSC's decision.

Reversed.

/s/ Henry William Saad  
/s/ Kirsten Frank Kelly  
/s/ Elizabeth L. Gleicher